

1 Michael A. Gould (SB# 151851)
2 Michael@wageandhourlaw.com
3 Aarin Zeif (SB# 247088)
4 Aarin@wageandhourlaw.com
5 Gould & Associates
6 A Professional Law Corporation
7 17822 East 17th Street, Suite 106
8 Tustin, California 92780
9 Telephone: (714) 669-2850
10 Facsimile: (714) 544-0800

11 Richard A. Jones (SB# 117679)
12 Law Offices of Richard A. Jones
13 1820 E. 17th Street
14 Santa Ana, California 92705
15 Telephone: (714) 480-0200
16 Facsimile: 714-480-0423

17 Attorneys for Plaintiff
18 BRIAN MARTIN

STEPHEN L. BERRY (SB# 101576)
stephenberry@paulhastings.com
BRIGHAM M. CHENEY (SB# 238219)
brighamcheney@paulhastings.com
PAUL HASTINGS, LLP
695 Town Center Drive
Seventeenth Floor
Costa Mesa, CA 92626-1924
Telephone: (714) 668-6200
Facsimile: (714) 979-1921

WILLIAM H. PICKERING
wpickering@chamblisslaw.com
(Admitted Pro Hac Vice)
BRADLEY M. DAVIS
bdavis@chamblisslaw.com
(Admitted Pro Hac Vice)
CHAMBLISS, BAHNER & STOPHEL,
P.C.
605 Chestnut Street, Suite 1700
Chattanooga, TN 37450
Telephone: (423) 756-3000
Facsimile: (423) 508-1218

Attorneys for Defendant
MCKEE FOODS CORPORATION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

19 BRIAN MARTIN,

20
21 Plaintiff,

22 vs.

23
24 MCKEE FOODS CORPORATION,
25 and DOES 1 through 25,

26
27 Defendants.
28

CASE NO: 8:15-cv-00732-AG-JCG

PROTECTIVE ORDER

Action Filed: April 1, 2015
Trial Date: January 31, 2017

Hon. Andrew J. Guilford

1 In accordance with the Stipulation of the Parties, it is hereby, ORDERED
2
3 as follows:
4

5 1. Discovery in this action is likely to involve confidential,
6 proprietary, or private information requiring special protection from public
7 disclosure and from use for any purpose other than this litigation. Therefore,
8 in connection with discovery proceedings in this action, the parties may designate
9 any document, thing, material, testimony or other information derived therefrom, as
10 "CONFIDENTIAL" under the terms of this Protective Order (hereinafter "Order").
11 Confidential information is information which has not been made public and
12 includes but is not necessarily limited to information which concerns or relates to
13 the processes, operations, type or work, or apparatus, or to the production, sales,
14 distribution, personnel, shipments, purchases, transfers, identification of customers,
15 inventories, finances, costs, margins, income, profits, losses, or expenditures of any
16 persons, firm, partnership, corporation, or other organization, the disclosure of
17 which information may have the effect of causing harm to the competitive position
18 of the person, firm, partnership, corporation, or to the organization from which the
19 information was obtained. By designating a document, thing, material, testimony,
20 or other information derived therefrom as "CONFIDENTIAL," under the terms of
21 this Order, the party making the designation is certifying to the court that there is a
22 good faith basis both in law and in fact for the designation within the meaning of
23 Fed. R. Civ. P. 26(g).
24

25 2. Confidential documents shall be so designated by stamping copies of
26 the document produced to a party with the legend "CONFIDENTIAL." Stamping
27 the legend "CONFIDENTIAL" on the cover of any multipage document shall
28 designate all pages of the document as confidential, unless otherwise indicated by

1 the producing party.

2
3 3. Testimony taken at a deposition, conference, hearing or trial may be
4 designated as confidential by making a statement to that effect on the record at the
5 deposition or other proceeding or up through and including ten business days
6 following such deposition or other proceeding. Arrangements shall be made with
7 the court reporter taking and transcribing such proceeding to separately bind such
8 portions of the transcript containing information designated as confidential, and to
9 label such portions appropriately.

10
11 4. Material designated as confidential under this Order, the information
12 contained therein, and any summaries, copies, abstracts, or other documents derived
13 in whole or in part from material designated as confidential (hereinafter
14 "Confidential Material") shall be used only for the purpose of the prosecution,
15 defense, or settlement of this action, and for no other purpose.

16
17 5. Confidential Material produced pursuant to this Order may be
18 disclosed or made available only to the Court, to counsel for a party (including any
19 paralegal, clerical, and secretarial staff employed by such counsel), and to the
20 "qualified persons" designated below:

21
22 (a) a party, or an officer, director, or employee of a party deemed
23 necessary by counsel to aid in the prosecution, defense, or settlement
24 of this action;

25
26 (b) experts or consultants (together with their clerical staff) retained
27 by such counsel to assist in the prosecution, defense, or settlement of
28 this action;

1 (c) court reporter(s) employed in this action;

2
3 (d) witnesses in the action to whom disclosure is reasonably
4 necessary during their depositions or other proceedings in this action;

5
6 (e) the author or recipient of a document containing the material, or
7 a custodian or other person who otherwise possessed or knew the
8 information; and

9
10 (f) any other person as to whom the parties in writing agree.
11

12 Prior to receiving any Confidential Material, each "qualified person" shall be
13 provided with a copy of this Order and shall execute a nondisclosure agreement in
14 the form of Attachment A, a copy of which shall be provided forthwith to counsel
15 for each other party and for the parties.
16

17 6. Depositions shall be taken only in the presence of qualified persons.
18

19 7. The parties may further designate certain discovery material or
20 testimony of a highly confidential and/or propriety nature as "CONFIDENTIAL -
21 ATTORNEY'S EYES ONLY" (hereinafter "Attorney's Eyes Only Material"), in the
22 manner described in Paragraphs 2 and 3 above. Attorney's Eyes Only Material, and
23 the information contained therein, shall be disclosed only to the Court, to counsel
24 for the parties (including the paralegal, clerical, and secretarial staff employed by
25 such counsel), and to the "qualified persons" listed in subparagraphs 5 (b) through
26 (f) above, but shall not be disclosed to a party, or to an officer, director or employee
27 of a party, unless otherwise agreed or ordered. If disclosure of Attorney's Eyes
28 Only Material is made pursuant to this paragraph, all other provisions in this order

1 with respect to confidentiality shall also apply.

2
3 8. Any challenge to the confidentiality designation of a document shall
4 proceed under Local Rule 37-1 through 37-4.

5
6 9. Nothing herein shall impose any restrictions on the use or disclosure
7 by a party of material obtained by such party independent of discovery in this
8 action, whether or not such material is also obtained through discovery in this
9 action, or from disclosing its own Confidential Material s it deems appropriate.

10
11 10. If Confidential Material, including any portion of a deposition
12 transcript designated as Confidential or Attorney's Eyes Only, is included in any
13 papers to be filed in Court, such papers shall be labeled "Confidential - Subject to
14 Court Order" and filed under seal until further order of the Court.

15
16 11. In the event that any Confidential Material is used in any court
17 proceeding in this action, it shall not lose its confidential status through such use,
18 and the party using such Confidential Material shall take all reasonable steps to
19 maintain its confidentiality during such use.

20
21 12. If a party is served with a subpoena or a court order issued in another
22 proceeding that compels disclosure of any Confidential Material, that party must:
23 (a) promptly notify the designator in writing and provide a copy of the subpoena or
24 court order; (b) promptly notify in writing the party who caused the subpoena or
25 court order to issue in the other proceeding that some of or all of the material
26 covered by the subpoena or court order is subject to this Order and provide a copy
27 of this Order; and (c) cooperate with all reasonable procedures sought by the
28 designator whose material may be affected. If the designator timely seeks a

1 protective order, the party served with the subpoena or court order shall not produce
2 any Confidential Material before determination by the court where the subpoena or
3 order issued, unless the party has obtained the designator's permission.
4

5 13. When a producing party gives notice that certain inadvertently
6 produced material is subject to a claim of privilege or other protection, the
7 obligations of the receiving parties are those set forth in Fed. R. Civ. P. 26(b)(5)(B).
8 This provision is not intended to modify whatever procedure may be established in
9 an e-discovery order that provides for production without prior privilege review
10 pursuant to Fed. R. Evid. 502(d) and (e).
11

12 14. This Order shall be without prejudice to the right of the parties to
13 present a motion to the Court under Fed. R. Civ. P. 26(c) for a separate protective
14 order as to any particular document or information, including restrictions differing
15 from those as specified herein. This Order shall not be deemed to prejudice the
16 parties in any way in any future application for modification of this Order.
17

18 15. This Order is entered solely for the purpose of facilitating the
19 exchange of documents and information between the parties to this action without
20 involving the Court unnecessarily in the process. Nothing in this Order, nor the
21 production of any information or document under the terms of this Order, nor any
22 proceedings pursuant to this Order shall be deemed to be an admission or waiver by
23 either party or of altering the confidentiality or nonconfidentiality of any such
24 document or information or altering any existing obligation of any party or the
25 absence thereof.
26

27 16. This Order shall survive the final termination of this action, to the
28 extent that the information contained in Confidential Material is not or does not

1 become known to the public, and the Court shall retain jurisdiction to resolve any
2 dispute concerning the use of information disclosed hereunder. Upon termination
3 of this case, counsel for the parties shall assemble and return to each other all
4 documents, material and deposition transcripts designated as confidential and all
5 copies of same, or shall certify the destruction thereof.

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8 IT IS SO ORDERED,

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10 DATED: October 23, 2015


11 HON. JAY C. GANDHI
12 UNITED STATES MAGISTRATE JUDGE
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Attachment A

NONDISCLOSURE AGREEMENT

I, _____ do solemnly swear that I am fully familiar with the terms of the Protective Order entered in *Brian Martin v. McKee Foods Corporation*, United States District Court for the Central District of California, Case No. 8:15-CV-00732, and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further Order of this Court. I hereby consent to the jurisdiction of said Court for purposes of enforcing this Order.

DATED: _____
